A

Mohammad Hafiz bin Hamidun v Kamdar Sdn Bhd

B HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22IP-13–04 OF 2017
MOHD RADZI HARUN J
22 DECEMBER 2022

C *Damages — Assessment — Tort — Plaintiff who sold own brand of apparel claimed loss of goodwill as result of tort of passing off committed by defendant — Whether quantum to be awarded to plaintiff had to accord with his celebrity status — Whether number of Instagram followers plaintiff had reflected his fan base and extent of popularity — Whether this method enabled court to assess fair and reasonable amount to be awarded to plaintiff*

D

The plaintiff was not only a Nasyid singer and song composer but also sold his own brand of apparel online as well as in boutiques. On coming to know that the defendant was selling apparel bearing the label 'Hafiz Hamidun', the plaintiff instructed his solicitors to demand that the defendant stop the practice immediately. The defendant complied but changed its labelling to the words 'Afiz Amidun'. Aggrieved that the new label was still referable to him, the plaintiff sued the defendant for the tort of passing off, seeking RM5m in damages for loss of goodwill and RM54,000 for loss of endorsement fee/royalty. The High Court allowed the RM54,000 claim but awarded only RM200,000 for loss of goodwill. The Court of Appeal ('COA') overturned the High Court's decision when the plaintiff appealed against the inadequacy of the RM200,000 award. On the plaintiff's further appeal, the Federal Court set aside the COA's decision and restored the High Court's decision. Pursuant to the Federal Court's ruling, the instant proceedings was to assess the damages payable to the plaintiff for loss of goodwill. The defendant submitted that the plaintiff was only entitled to nominal damages as he had failed to prove his claim for RM5m.

E

F

G

H

Held, awarding the plaintiff RM200,000 for loss of goodwill:

(1) Applying the formula set out in *Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kong Wah Trading Co) & Ors* [2018] Supp MLJ 312, the correct method to calculate the plaintiff's loss of business profits was the quantum caused by the diversion of the plaintiff's customers to the defendant as a result of the defendant's misrepresentation of the plaintiff's Hafiz Hamidun mark using an acceptable multiplication of assumed profits (see para 24).

I

(2) When dealing with celebrities such as the plaintiff, the determination of the appropriate quantum of damages to be awarded had to correspond with his celebrity status, which could be garnered from his personal achievements and fan base (see para 26).

(3) Although there was no conclusive method to determine a celebrity's popularity, one acceptable way, albeit subjective, was to have regard to that celebrity's social media following, particularly on Instagram. This court took judicial notice of the fact that the top ten Malaysian celebrities recorded between 6 million and 8.5 million followers on Instagram. The 100th celebrity in that list held 1.8 million followers. In comparison, the plaintiff had 1.1 million followers on Instagram. The number of followers the plaintiff had on Instagram was one way to assist the court to determine the extent of his fan base and compare that with his other celebrity colleagues. Considering the above, and also taking into account that the defendant had only committed the tort of passing off over a 72-day period, which period did not fall within a festive season, the sum of RM200,000 was a reasonable and just award for damage to the plaintiff's goodwill (see paras 29–31).

[Bahasa Malaysia summary

Plaintif bukan sahaja seorang penyanyi Nasyid dan komposer lagu tetapi juga menjual pakaian jenama sendiri secara dalam talian dan juga di butik. Apabila mengetahui defendan menjual pakaian berlabel 'Hafiz Hamidun', plaintif mengarahkan peguamcaranya untuk membuat tuntutan bahawa defendan menghentikan tindakan tersebut serta-merta. Defendan akur tetapi menukar pelabelannya kepada perkataan 'Afiz Amidun'. Terkilan kerana label baharu tersebut masih merujuk kepadanya, plaintif menyaman defendan atas tort kelirupaan nama, menuntut ganti rugi RM5 juta untuk kehilangan nama baik dan RM54,000 untuk kehilangan fi pengendorsan/royalti. Mahkamah Tinggi membenarkan tuntutan RM54,000 tetapi hanya memberikan RM200,000 atas kehilangan nama baik. Mahkamah Rayuan ('MR') membatalkan keputusan Mahkamah Tinggi apabila plaintif merayu terhadap ketidakcukupan award RM200,000 tersebut. Atas rayuan lanjut plaintif, Mahkamah Persekutuan mengetepikan keputusan MR dan mengekalkan keputusan Mahkamah Tinggi. Berdasarkan keputusan Mahkamah Persekutuan, prosiding semasa adalah untuk mentaksir ganti rugi yang perlu dibayar kepada plaintif bagi kehilangan nama baik. Defendan berhujah bahawa plaintif hanya berhak mendapat ganti rugi nominal kerana beliau gagal membuktikan tuntutannya untuk RM5 juta.

Diputuskan, memberikan plaintif award RM200,000 bagi kehilangan nama baik:

(1) Menggunakan formula yang ditetapkan dalam *Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kong Wah Trading Co) & Ors* [2018] Supp MLJ 312,

kaedah yang betul untuk mengira kehilangan keuntungan perniagaan plaintif adalah kuantum yang disebabkan oleh pengalihan pelanggan plaintif kepada defendan akibat salah nyata defendan terhadap tanda dagang milik plaintif Hafiz Hamidun dengan menggunakan pendaraban yang boleh diterima bagi keuntungan yang dianggapkan (lihat perenggan 24).

(2) Apabila berurusan dengan selebriti seperti plaintif, penentuan kuantum ganti rugi yang bersesuaian untuk diberikan harus sepadan dengan status selebritinya, yang mana boleh diukur daripada pencapaian peribadi dan peminatnya (lihat perenggan 26).

(3) Walaupun tiada kaedah muktamad untuk menentukan popularity seseorang selebriti, satu cara yang boleh diterima, walaupun subjektif, adalah dengan mengambil kira pengikut media sosial selebriti tersebut, terutamanya di Instagram. Mahkamah ini mengambil perhatian kehakiman mengenai fakta bahawa sepuluh selebriti Malaysia tersohor merekodkan antara 6 juta dan 8.5 juta pengikut di Instagram. Selebriti ke-100 dalam senarai tersebut mempunyai 1.8 juta pengikut. Sebagai perbandingan, plaintif mempunyai 1.1 juta pengikut di Instagram. Bilangan pengikut plaintif di Instagram adalah salah satu cara untuk membantu mahkamah menentukan tahap kumpulan peminatnya dan membandingkannya dengan rakan selebritinya yang lain. Mengambil kira perkara di atas, dan juga mengambil kira bahawa defendan hanya melakukan tort kelirupaan nama dalam tempoh 72 hari, yang mana tempohnya tidak jatuh dalam musim perayaan, jumlah RM200,000 adalah satu award yang munasabah dan adil untuk kerosakan kepada nama baik plaintif (lihat perenggan 29–31).]

Cases referred to

AG Spalding & Bros v AW Gamage Ltd and Benetfink & Co Ltd [1915] 32 RPC 273 (refd)

Brown and another v Jam Factory Pty Ltd and another [1981] 35 ALR 79, FC (refd)

Dormeuil Frères SA and another v Feraglow Limited and another [1990] RPC 449, Ch D (refd)

Esso Petroleum Co Ltd v Mardon [1976] 2 All ER 5; [1976] QB 801, CA (refd)

Fenty and others v Arcadia Group Brands Ltd (trading as Topshop) and another [2015] 1 WLR 3291, CA (refd)

General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd [1976] RPC 197, HL (refd)

Guangdong Foodstuffs Import & Export (Group) Corporation, Yau Shing Hong Provisions Limited v Tung Fook Chinese Wine (1982) Co Ltd, Shiwan Brewery of Foshan City In Guangdong Province and others [1998] HKCU 2548, HC (refd)

Guan Soon Tin Mining Co v Wong Fook Kum [1969] 1 MLJ 99; [1968] 1 LNS 43, FC (refd)
Irvine and another v Talksport Ltd [2002] 2 All ER 414 ; [2002] 1 WLR 2355, Ch D (refd)
Juggi Lal-Kamlapat and Juggilal-Kamlapat Mills of Cawnpore v Swadeshi Co Ltd [1928] 46 RPC 74, PC (refd)
Leather Cloth Company v Hirschfield [1865] LR 1 Eq 299 (refd)
Livingstone v The Rawyards Coal Company [1880] 5 App Cas 25, HL (refd)
Mohammad Hafiz bin Hamidun v Kamdar Sdn Bhd [2021] 4 MLJ 878; [2021] 6 CLJ 799, FC (refd)
PJ Uniform Sdn Bhd v St John Ambulans Malaysia (pertubuhan statutori yang diperbadankan dibawah Akta (Perbadanan) St John Ambulans Malaysia 1972) [2018] MLJU 1698, CA (refd)
Pneumatic Tyre Co Ltd v Puncture Proof Pneumatic Tyre Co Ltd [1899] 16 RPC 209, CA (refd)
Prince Manufacturing Inc v ABAC Corp Australia Pty Ltd [1984] 57 ALR 159; [1984] FCA 356, FC (refd)
Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kong Wah Trading Co) & Ors [2018] Supp MLJ 312; [2011] 3 CLJ 837, FC (folld)
The United Horse-Shoe and Nail Company Limited v John Stewart & Co [1888] 5 RPC 260, HL (refd)

Habizan Rahman (with Thevini Nayagam) (Rahman Rohaida) for the plaintiff.
Eugene Joseph (with Yong Cheng Aik) (Joseph Chambers) for the defendant.

Mohd Radzi Harun J:

INTRODUCTION

[1] The plaintiff had succeeded in his appeal at the Federal Court where the decision of the High Court to allow his claim against the defendant for the tort of passing off, which was reversed by the Court of Appeal, was restored (see judgment of the Federal Court in *Mohammad Hafiz bin Hamidun v Kamdar Sdn Bhd* [2021] 4 MLJ 878; [2021] 6 CLJ 799).

[2] The proceeding in issue before me was for the assessment of the plaintiff's damages, following the said decision of the Federal Court.

[3] The plaintiff had asked for an amount of RM5m in damages for the loss of his goodwill, and RM54,000 for loss of endorsement fee/royalty. This court had allowed an amount of RM200,000 for the plaintiff's goodwill and RM54,000 for his loss of endorsement fee/royalty.

A **[4]** This court had also allowed interest at the rate of 5%pa on the said sum calculating from the date of the filing of the plaintiff's action to the date of full realisation thereof.

B **[5]** The plaintiff appealed partially against the decision of this court, namely against this court's award of RM200,000 for his loss of goodwill instead of his claim of RM5m for the same.

SALIENT FACTS

C **[6]** I would regurgitate the facts of the case as so succinctly set out in the judgment of the Federal Court.

[7] The plaintiff is an artist, popularly known as a Nasyid singer and song
D composer. In addition to his role as an artist, the plaintiff is also in the fabrics business and selling his own line of clothing's online and in boutiques. The plaintiff incorporated Mikraj Concept Sdn Bhd ('MCSB') which was later renamed as Haje Sdn Bhd ('HSB') for the purposes of carrying out his fabrics business.

E **[8]** The defendant is a company incorporated in 1972, primarily engaged in the business of selling fabrics. At the material time, the defendant had 29 stores throughout various locations in Malaysia.

F **[9]** The issue arose sometime in February 2017, when the plaintiff received messages from his fans and/or followers on social media asking him whether certain goods sold by the defendant with the label 'Hafiz Hamidun' were actually his.

G **[10]** The plaintiff maintains that 'Hafiz Hamidun', which words are his own name, is an unregistered trademark which the plaintiff uses, for among other purposes, his own fabrics line. The plaintiff asserts that by selling products with the same label, the defendant passed off the unregistered trademark of 'Hafiz
H Hamidun'.

[11] The plaintiff instructed his solicitors to write to the defendant to demand that they cease using the label 'Hafiz Hamidun' on their products. The letter, which is dated 13 February 2017 received no reply. Following that letter
I however, the defendant stopped using the words 'Hafiz Hamidun' and instead replaced it with 'Afiz Amidun'. The plaintiff avers that it is plain and obvious to the eye of any reasonable person that the new label is still the plaintiff's name but without the two letters 'H' in the first letter of each word. In sound, style and substance however, the label is obviously the same.

[12] Aggrieved, the plaintiff sued the defendant in the High Court on 14 April 2017. It is most pertinent to note that upon the filing of this suit, the defendant ceased entirely the use of 'Hafiz Hamidun' and 'Afiz Amidun'. The High Court decided in favour of the plaintiff, a decision which was reversed by the Court of Appeal.

[13] In a landmark decision, the Federal Court reversed the Court of Appeal's findings and reinstated the decision of the learned judge of the High Court in allowing the plaintiff's claim. The Federal Court held that:

(a) the evidence was quite overwhelming that there was goodwill attached to the name 'Hafiz Hamidun' such that any misrepresentation of it would cause or is likely to cause damage to the goodwill of a business conducted using it;

(b) a celebrity had locus standi to maintain an action in passing off even if some other business uses his or her name. The goodwill in the name 'Hafiz Hamidun' belonged to the plaintiff and not HSB, in that, the unregistered trademark was identified with the plaintiff;

(c) the defendant was a mere outsider who had otherwise no business to use the unregistered trademark without consent and by which it has generated profit through deception;

(d) the essential element, apart from showing that they have goodwill, is the element of misrepresentation. A claim in passing off is established if the general public is led to believe that the celebrity in question has endorsed the goods or item in question. The misappropriation and deceptive use of a celebrity's name for commercial gain is an issue which is consonant with the purpose for which the tort of passing off was developed to remedy; and

(e) it is not sufficient to make out a case of passing off merely by illustrating that the celebrity's name or image was or has been used in a certain way per se. What is important is 'the belief which this false representation engenders in the minds of the purchasers must play a part in their decision to buy' to the extent that the 'impugned activity involves a false representation that there is a connection between the claimant and the goods in issue of a relevant kind'. The members of the public, comprising the plaintiff's 'fans', were led to believe that the goods sold by the defendant under the name 'Hafiz Hamidun' were the plaintiff's or that he had somehow endorsed them. Therefore, there was clearly deception on the part of the defendant by misappropriating the goodwill in the plaintiff's name, 'Hafiz Hamidun'.

A ISSUE FOR DETERMINATION BEFORE THIS COURT

[14] Following that decision, the matter came before this court to assess the plaintiff's damages for the defendant's tortious act of passing off. Particularly, as the decision of the learned High Court judge was reinstated by the Federal Court, the issue for determination before this court is only to assess the damages as ordered by the learned High Court judge, viz:

> Suatu taksiran untuk ganti rugi di hadapan Hakim untuk kerugian yang dialami oleh Plaintif berkenaan dengan penjualan kain dan/atau fabrik baju melayu yang dicetak dan diiabelkan dengan nama dan/atau jenama 'Hafiz Hamidun'.

[15] As indicated in the earlier paragraph, this court had ordered damages in the amount of RM54,000 for loss of endorsement fee/royalty and a further amount of RM200,000 for the plaintiff's goodwill.

[16] As this appeal is only against this court's decision regarding the quantum of damages for the plaintiff's loss of goodwill, this grounds shall focus on this heading of damages only.

E FINDINGS

[17] The defendant premised its objection to the plaintiff's claim for loss of goodwill on the following grounds:

(a) the plaintiff must prove damage, particularly in the sum of RM5m as claimed;

(b) the defendant's act of passing off was limited and thus the plaintiff cannot be awarded with such huge sum of damages; and

(c) the claimed amount of RM5m exceeds the defendant's profit obtained from the defendant's sale of the impugned material and/or fabric.

[18] This court agrees with the defendant counsel's submission that it is the plaintiffs duty to establish his entitlement to the damages claimed by bringing in evidence to prove the amount he claimed he is entitled, for otherwise the plaintiff must be awarded with nominal damages. This principle was set out in *Guan Soon Tin Mining Co v Wong Fook Kum* [1969] 1 MLJ 99; [1968] 1 LNS 43 when the Federal Court held:

> Where he succeeded in proving the fact of damage, but not its amount, he would again be entitled to an award of nominal damages only ... it is not enough to write down the particulars and so to speak, throw them at the head of the court, saying, 'This is what I have lost: I ask you to give me these damages'. They have to prove it.

[19] This established principle was further affirmed in the seminal decision

of the Federal Court in *Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kong Wah Trading Co) & Ors* [2018] Supp MLJ 312; [2011] 3 CLJ 837 where the Federal Court held:

> The onus is upon the plaintiff to prove the loss actually sustained by reason of the defendant's conduct. The plaintiff is entitled to such damages as naturally flow from their unlawful act, and that there is no artificial limitation in the case of a passing olfaction Speculative and unproven damage are also excluded.

[20] Relying on *Guan Soon Tin Mining* and *Taiping Poly*, the defendant argued that as the plaintiff failed to provide prove of the amount of damage as a result of the passing off, and in the absence of expert evidence to assist the court to evaluate the plaintiff's goodwill, this court must disallow the plaintiff's exorbitant claim of RM5m and instead the plaintiff is entitled to an award of nominal damages only.

[21] The defendant further asked this court to consider the case of *PJ Uniform Sdn Bhd v St John Ambulans Malaysia (pertubuhan statutori yang diperbadankan dibawah Akta (Perbadanan) St John Ambulans Malaysia 1972)* [2018] MLJU 1698. In this case the Court of Appeal awarded to St John Ambulans Malaysia damages of RM200,000 only despite having considered the fact that St John Ambulans Malaysia had existed in Malaysia since the 1900s, its status as a charitable organisation and that the infringer, PJ Uniform Sdn Bhd, had admitted the sales involving the wrongful use of St John Ambulans' mark for a period of over 30 years.

[22] In *Taiping Poly*, Richard Malanjum CJSS (later CJ), having referred to an extensive list of authorities (one among the cases referred to were: *Dormeuil Frères SA and another v Feraglow Limited and another* [1990] RPC 449, *Guangdong Foodstuffs Import & Export (Group) Corporation, Yau Shing Hong Provisions Limited v Tung Fook Chinese Wine (1982) Co Ltd, Shiwan Brewery of Foshan City In Guangdong Province and others* [1998] HKCU 2548, *Prince Manufacturing Inc v ABAC Corp Australia Pty Ltd* [1984] 57 ALR 159; [1984] FCA 356, *AG Spalding & Bros v AW Gamage Ltd and Benetfink & Co Ltd* [1915] 32 RPC 273, *Leather Cloth Company v Hirschfield* [1865] LR 1 Eq 299, *The United Horse-Shoe and Nail Company Limited v John Stewart & Co* [1888] 5 RPC 260, *Pneumatic Tyre Co Ltd v Puncture Proof Pneumatic Tyre Co Ltd* [1899] 16 RPC 209, *Livingstone v The Rawyards Coal Company* [1880] 5 App Cas 25, *Esso Petroleum Co Ltd v Mardon* [1976] 2 All ER 5; [1976] QB 801, *Brown and another v Jam Factory Pty Ltd and another* [1981] 35 ALR 79, *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd* [1976] RPC 197, *Juggi Lal-Kamlapat and Juggilal-Kamlapat Mills of Cawnpore v Swadeshi Co Ltd* [1928] 46 RPC 74) and scholarly works in *McGregor on Damages* (16th Ed), set out the following principles in determining the appropriate quantum to be awarded to a litigant who had succeeded in his claim for passing off:

A (a) damages for passing off is the loss of business profits caused by the diversion of the plaintiff's customers to the defendant as a result of the defendant's misrepresentation by reason of the presence of the deceptive goods on the market;

B (b) the onus is upon the plaintiff to prove the loss actually sustained by reason of the defendant's conduct;

(c) the plaintiff is entitled to such damages as naturally flow from the defendant's unlawful act, and that there is no artificial limitation in the case of a passing off action;

C (d) it cannot be presumed that the amount of goods sold by the defendant under an infringing trademark would have been sold by the plaintiff if not for the defendant's unlawful use of the trademark;

(e) it is compensatory, that is, to put the plaintiff in the same position he would have been had the wrong not been committed;

D (f) damages is to be assessed liberally;

(g) there is no hard and fast rule to follow which is fool proof and universally accepted as it depends on the facts of each case; and

E (h) it is also necessary to exclude those customers of the defendant who were not misled in making their purchases. Otherwise the plaintiff would be overcompensated.

F **[23]** It is this court's finding that in *Taiping Poly*, in line with its conclusion that there is no hard and fast rule to follow which is foolproof and universally accepted in assessing the quantum of damages for passing off as it is facts-driven, the Federal Court had made it unequivocally clear that it was not laying down any specific rule to be followed even by the lower court on method of calculating damages for trade mark infringement. Instead, the Federal Court reiterated again and again that the rule to be applied is based on facts before each court, taking into account that the claimant has the burden of proving their loss, that the damages should be liberally assessed but at the same time realising that the object is to compensate the claimant and not to punish the defendant.

[24] Applying the formula as set out in *Taiping Poly*, this court ruled that the correct method to calculate plaintiff's loss of business profits shall be the quantum caused by the diversion of the plaintiff's customers to the defendant as a result of the defendant's misrepresentation of the plaintiff's 'Hafiz Hamidun' mark using an acceptable multiplication of assumed profits.

[25] Apart from adhering to the above principle as set out in *Taiping Poly*, in determining the appropriate quantum to be awarded to the plaintiff, this court

also took the cue from the decision of the Federal Court when it decided to overturn the decision of the Court of Appeal in favour of the plaintiff that:

> ... goodwill is a flexible and malleable asset in that it can manifest and be generated in a myriad of ways depending on the nature of the trade or business. Specifically, in the context of celebrities, it is quite apparent that the goodwill in their work or trade is particularly generated by their personal achievements and fan base.

[26] This court resolved from that proposition that when dealing with celebrities such as the plaintiff, determination of the appropriate quantum of damages must correspond with the status and stature of that celebrity, which could be garnered from his personal achievements and fan base.

[27] In determining the issue of liability in favour of the plaintiff, the Federal Court had considered and accepted the decision of the English Courts in *Irvine and another v Talksport Ltd* [2002] 2 All ER 414 ; [2002] 1 WLR 2355 ('Irvine') and *Fenty and others v Arcadia Group Brands Ltd (trading as Topshop) and another* [2015] 1 WLR 3291 ('Topshop'). Both of these cases involved celebrity of a certain standing. In Irvine, the claimant was Mr Edmund 'Eddie' Irvine, a prominent F1 race car driver. Irvine sued the defendant for an edited photograph taken from another photograph of the claimant holding a mobile phone. The edited photograph was made to look as though the claimant was holding a portable radio with the defendant's radio station in the same picture. In *Topshop*, the claimant was Rihanna, a hugely popular singer, who sued the defendant for the distribution and sale of t-shirts with printed photograph of Rihanna, without her consent. Both celebrities succeeded in their respective claims.

[28] This court had also referred to and considered the damages that were awarded to both of these celebrities. Eddie Irvine was paid GBP25,000 in damages, regarded as a 'reasonable endorsement fee' the defendant 'would have had to pay in order to obtain lawfully that which it in fact obtained unlawfully. Rihanna sued for GBP3.3m. Although the court did not make any specific order for damages to her, the court allowed her application to ban the sale of the impugned t-shirts at Topshop stores. Topshop was also ordered to pay over GBP 1m for her legal costs.

[29] This court had considered the evidence provided by the plaintiff to demonstrate his stature as an accomplished singer and a widely renowned celebrity (refer particularly the plaintiff's affidavit in reply where in exh HH5 the plaintiff was enlisted as one of the top-500 global influential Muslims in the category of Arts and Culture, alongside Dato' Seri Siti Nurhaliza). This court took judicial notice that despite this evidence, the plaintiff cannot claim his standing as a Malaysian celebrity to be at par with that of Dato' Seri Siti Nurhaliza. This is an undeniable fact. This court again took judicial notice that

there is no conclusive method to determine a celebrity's popularity. But one of the acceptable methods, albeit subjective, that is often cited as a measure of the recognition, acceptance and approval of a celebrity fame, is by the count of that celebrity's social media following, particularly the number of followers on their Instagram accounts. This court took further judicial notice of a known fact that the top Ten Malaysian celebrities recorded between 6 million to 8.5 million followers on their respective Instagram accounts. The 100th celebrity in that list holds 1.8 million followers. In comparison, the plaintiff has 1.1 million followers on his Instagram account.

[30] This court is conscious of the fact that such relative and subjective fact cannot on its own be a determinant factor to be adopted by this court in deciding the quantum of damages to be awarded to the plaintiff. But recognising the decision of the Federal Court that in the context of celebrities, it is quite apparent that the goodwill in their work or trade is particularly generated by their personal achievements and fan base, the number of followers on the plaintiff's Instagram account is one way to assist this court to know the state of his fan base, comparing that with his other celebrity colleagues.

[31] Having considered all the above, and also taking into account the 72-day period (31 January 2017–12 April 2017) involved in the defendant's commission of the tortuous act of passing off, and bearing in mind that the said period was not a festive period (Hari Raya Aidil Fitri in 2017 fell on 25–26 June 2017), I find a sum of RM200,000 as an award for the damage to the plaintiff's goodwill as a reasonable and just amount.

Plaintiff awarded RM200,000 for loss of goodwill.

Reported by Ashok Kumar